

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2866 of 2013 (O&M)

Reserved on: 26.04.2017

Date of decision:10.05.2017

Daya Singh

....Petitioner

Versus

Avtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Gurcharan Dass, Advocate, for the petitioner.

Mr.Satinder Khanna, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The petitioner-tenant challenges the eviction order dated 19.03.2013, passed by the Rent Controller, Ludhiana, who, while declining the application for leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') had ordered eviction under Section 13-B of the Act, from the shop in question, which is forming part of the property No.B-XX-667, Gurdwara Mai Nand Kaur Road, Ghumar Mandi, Civil Lines, Ludhiana. The property had also been described in colour red in the site plan attached with the petition.

The reasoning given by the Rent Controller was that Basant Kaur, who was the original owner vide sale deed dated 26.05.1961, had executed a Will dated 10.05.1978 in favour of the respondent who was living with her and rendered her services. She had expired in the year 1978 and the revenue record was in favour of the respondent-landlord. The rent note was also there executed between the parties in which there was an admission regarding the ownership of the landlord and resultantly, keeping in view the fact that the landlord was an NRI and settled in America since 1991, he was held entitled for the benefit of ejectment.

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A perusal of the paperbook would go on to show that the petition under Section 13-B was filed taking the plea that on the death of Basant Kaur, the petitioner had succeeded to the estate as per the Will dated 10.05.1978. The revenue records showed khasra numbers initially, which had been given property numbers in the jamabandi for the year 2004-05. The shop had been constructed and the site-plan of the entire property had been attached with the eviction petition. As per the rent note, the shop had been taken on rent for a period of 3 months initially and the tenant had continued to keep the premises in dispute, thereafter. The landlord was settled in USA along with his 2 sons and was visiting India on and of. He owned agricultural land in Village Ghumar Mandi, Tehsil Jagraon, District Ludhiana to the tune of 90 kanals wherein also, he had a house. Basant Kaur, the original owner, was none else but his maternal grandmother who had purchased the property vide registered sale deed dated 26.05.1961. It was averred that he was temporarily settled in America and being aged around 60 years, had decided to return to India and start computer business.

The application under Section 18-A sought to raise the triable issue on the ground that there was no intention to return as the children were settled there and that he was getting pension being a senior citizen. He had not surrendered his citizenship and the petition had been filed through an attorney. It was also denied that the respondent was the owner of the property and the ownership was on the basis of a Will only and there was no exclusive owner.

In the reply filed, it was submitted that the rent note showed

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that there was relationship of landlord-tenant and shop No.5 was under the tenancy and the registered Will finds mention in the revenue record which would go on to show that there was an ownership as such. Once there was an admission the tenant was estopped from denying the title of the landlord. Merely because he was getting pension from the Government of America would not disentitle him to return to India and carry on the business. He had come to India and had personally filed the petition and was visiting India on and of. The revenue record showed that the ownership was his and there was no requirement of surrendering the citizenship, as such.

A perusal of the photocopy of the Passport would go on to show that the respondent is holder of a Passport issued by the United States of America and the place of birth is shown as India. The date of birth being 09.01.1942, the Passport was issued by the American authorities in India. The earlier Passport which has been cancelled would also show that the Passport was issued by the agency at San Francisco in USA and the place of birth was also shown as India. Thus, it is apparent that the respondent is a person of Indian origin. On the death of his maternal grandmother in the year 1978, succession had opened up and he had become owner on the basis of the registered Will and the revenue entries were made in his favour. While taking the property on rent, the tenant admitted his ownership, as such, and now, cannot turn around and say that he does not have the ownership rights, in view of the provisions of Section 116 of the Indian Evidence Act, 1872. In an earlier petition filed before the rent authorities on the grounds of arrears of rent, the

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respondent had admitted relationship of landlord-tenant and the ownership aspect and provisional rent had been assessed by the Rent Controller on 08.11.2012 and therefore, the tenant cannot, now, take any other stand that there is no ownership, as such. Therefore, the eviction which has been ordered, is, thus, well justified, in the facts and circumstances.

The Rent Controller also rightly noticed that the petition had been filed by the landlord himself and therefore, the argument that there was no intention to come back, was without any justification. The requisite conditions being fulfilled were of the ownership of 5 years prior to the filing of the petition on the basis of the registered Will, which had been duly incorporated in the revenue record. The title, as such, of the landlord and his intention to return and the *bona fide* presumption held out for the use of the premises, would all go on to show that the case is clearly covered by the principles laid down by the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini (2005) 12 SCC 778.**

Reference can also be made to the judgment passed in **Kamaljit Singh Vs. Sarabjit Singh 2014 (2) RCR (Rent) 249,** wherein a similar issue arose and the Rent Controller had dismissed the petition under Section 13-B, on the ground that the landlord was not able to connect the property with the entries made in the jamabandi. The said order was upheld by this Court, which was reversed by the Apex Court by holding that once the tenant had taken the premises and admitted the relationship of landlord-tenant, as such, he could not question the title of the landlord regarding the property in question. The orders passed by the

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Courts below were set aside and the eviction sought was granted and reliance was also placed upon Section 116 of the Evidence Act. Relevant portion of the judgment reads as under:

“18. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act. 19. The upshot of the above discussion is that the Courts below fell in manifest error in holding that the appellant-landlord was obliged to prove his title to the property, no matter the tenant clearly admits the existence of jural relationship of landlord and tenant between him and the appellant. We have, in the circumstances no hesitation in reversing the view taken by the Courts below and in decreeing the eviction petition.”

In the opinion of this Court, the facts of the present case are squarely covered by the above observations and resultantly, the present revision petition, being devoid of any merit, the same is, hereby, dismissed.

10.05.2017

Sailesh

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No

(G.S. SANDHAWALIA)
JUDGE